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HOUSE BILL NO. 564

Offered January 19, 2000

A BILL to amend and reenact §§ 46.2-389 and 46.2-391 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-411.1, relating to requiring ASAP for reinstatement of driving privilege.

Patron—Moran

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-389 and 46.2-391 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 46.2-411.1 as follows:

§ 46.2-389. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions.

A. The Commissioner shall forthwith revoke, and not thereafter reissue for a period of time specified in subsection B, except as provided in § 18.2-271 or § 18.2-271.1, the driver's license of any resident or nonresident on receiving a record of his conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States, or a law of any other state, substantially paralleling and substantially conforming to a like state law and to all changes and amendments of it:

1. Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle;
2. Violation of § 18.2-266 or § 18.2-272, or subsection A of § 46.2-341.24 or violation of a valid local ordinance paralleling and substantially conforming to § 18.2-266 or § 18.2-272;
3. Perjury or the making of a false affidavit to the Department under this chapter or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways;
4. The making of a false statement to the Department on any application for a driver's license;
5. Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used;
6. Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person; or
7. Violation of § 18.2-51.4.

B. For conviction of an offense set forth in subsection A, the period of revocation shall be for one year, except for a violation of subdivision A 1 or A 7, the revocation shall be for an indefinite period. *However, in no such event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of written notification that such person has successfully completed an alcohol safety action program if such person was required by a court to do so.*

§ 46.2-391. Revocation of license for conviction of driving while under influence of drugs or intoxicants; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), § 18.2-51.4 (maiming committed while driving under the influence of drugs or intoxicants), § 18.2-266 (driving under the influence of drugs or intoxicants), § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266), or a violation of a federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or § 18.2-272, if the second violation adjudication occurred within ten years from the prior violation. However, if the Commissioner has received a copy of a court order as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. *Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of written notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so.*

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person adjudged to be a third offender within a period of ten years in violation of the provisions of subsection A of § 46.2-341.24, §§ 18.2-51.4,

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60 18.2-266, or a violation of federal law or a law of any other state or a valid ordinance of any county,
61 city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or
62 § 18.2-272. At the expiration of ten years from the date of the revocation hereunder, the person may
63 petition the circuit court in the county or city in which he resides, and for good cause shown, his license
64 may in the discretion of the court be restored on such conditions as the court may prescribe.

65 C. Any person who has had his driver's license revoked in accordance with subsection B of this
66 section may petition the circuit court of his residence:

67 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration
68 of five years from the date of his last conviction. On such petition, and for good cause shown, the court
69 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth
70 on whatever conditions the court may prescribe, subject to the provisions of law relating to issuance of
71 driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous
72 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
73 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
74 dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the
75 safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to
76 acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia
77 Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court
78 may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for
79 a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The
80 court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the
81 restricted license monitor the person's compliance with the terms of the restrictions imposed by the
82 court. Any violation of the restrictions shall be reported to the court, and the court may then modify the
83 restrictions or revoke the license.

84 2. For a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in
85 the course of his employment and to drive a motor vehicle to and from his home to the place of his
86 employment after the expiration of three years from the date of his last conviction. The court may order
87 that a restricted license for such purposes be issued in accordance with the procedures of subsection E
88 of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous
89 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
90 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
91 dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat
92 to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court
93 may prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not
94 equipped with a functioning, certified ignition interlock system during all or any part of the term for
95 which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1.
96 However, prior to acting on the petition, the court shall order that an evaluation of the person be
97 conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted
98 to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license
99 monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation
100 of the restrictions shall be reported to the court, and the court may then modify the restrictions or
101 revoke the license.

102 In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this
103 subsection, such person shall be given credit for any period his driver's license was revoked under
104 § 46.2-360 after adjudication as a habitual offender.

105 D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i)
106 while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted
107 license issued pursuant to subsection C shall be punished as follows:

108 1. If such driving does not, of itself, endanger the life, limb, or property of another, such person
109 shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days or a
110 fine of not more than \$2,500, or both. However, ten days of any such confinement shall not be
111 suspended except in cases designated in subdivision 2 (ii) of this subsection.

112 2. If such driving of itself endangers the life, limb, or property of another or takes place while such
113 person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb
114 or property of another and one of the offender's underlying convictions is for § 18.2-36.1, § 18.2-51.4,
115 § 18.2-266 or a parallel local ordinance, such person shall be guilty of a felony punishable by
116 confinement in a state correctional facility for not less than one year nor more than five years or, in the
117 discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve
118 months and no portion of such sentence shall be suspended. However, (i) if the sentence is more than
119 one year in a state correctional facility, any portion of such sentence in excess of one year may be
120 suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme
121 emergency which require such operation to save life or limb, said sentence, or any part thereof may be

122 suspended.

123 3. If any such offense of driving is a second or subsequent violation, such person shall be punished
124 as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers
125 the life, limb, or property of another.

126 E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and
127 prior to imposition of sentence with the consent of the defendant, the court may order the defendant to
128 be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or
129 the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center
130 Incarceration Program pursuant to § 19.2-316.3.

131 § 46.2-411.1. *Reinstatement of driver's license suspended or revoked for a conviction of driving while*
132 *intoxicated.*

133 A. *Before restoring a driver's license to any person (i) whose license to drive a motor vehicle has*
134 *been suspended or revoked as a result of a conviction for driving while intoxicated in violation of*
135 *§ 18.2-266, or of any substantially similar valid local ordinance or law of another jurisdiction, or of*
136 *subsection A of § 46.2-341.24; and (ii) who has been required by a court order to successfully complete*
137 *an alcohol safety action program pursuant to § 18.2-271.1 because of that conviction, the Commissioner*
138 *shall require written confirmation that the person has successfully completed such program.*

139 B. *Any person who drives a motor vehicle in the Commonwealth after the period of license*
140 *suspension has expired and after all requirements for reinstatement have been satisfied except for*
141 *successful completion of such program shall be guilty of a violation of § 46.2-300.*